

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****218****RSA-4568-2015 (O&M)****Date of decision: 30.07.2025****Raj Kumar Wadhwa****...Appellant(s)****Vs.****Sumesh Kumar Mehta and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Himanshu Jawa, Advocate for
the appellant (through V.C.).

Mr. Divanshu Jain, Advocate and
Mr. Prateek Sodhi, Advocate for the respondent.

Mr. Jagdish Manchanda, Advocate for the respondents.

NIDHI GUPTA, J.**CM-11179-C-2016**

Prayer in the present application under Order 41 Rule 27 for placing on record the additional evidence by way of opinion of handwriting, expert and valuation report, as Annexures A1 and A2 respectively.

2. By way of the present application, the applicants – appellant is seeking to bring on record the opinion dated Nil of Handwriting Expert (Annexure A-1); and the Valuation Report of year 2007 (Annexure A-2). It may be pointed out that in a previous endeavour to bring on record additional evidence, similar application of the appellant was dismissed by the learned Court below vide order dated 1.11.2011. The said order dated



01.11.2011 was challenged by the defendant before this Court in CR No. 7507 of 2011, which was dismissed vide order dated 21.08.2012.

3. In any event, application for additional evidence cannot be permitted at this belated stage.

4. Application stands dismissed.

RSA-4568-2015 (O&M)

The defendant is in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the plaintiffs/respondents No. 1 and 2 herein, for possession by way of specific performance of Agreement to Sell dated 06.03.2007, has been decreed by both the Courts below.

2. Brief facts of the case as pleaded in the plaint are that the defendant had purchased the suit house vide registered Sale Deed No. 1055 dated 14.05.1999. The defendant had entered into an Agreement to Sell dated 6.3.2007, with the plaintiffs to sell the suit house for a total sale consideration of Rs.40,00,000/-; of which Rs.16 lacs was received as earnest money against receipt. As per the Agreement, the target date was fixed as 31.12.2007. Physical possession of the suit property was agreed to be handed over to the plaintiffs at the time of execution of the Sale Deed.

3. It was further pleaded in the plaint that on 27.12.2007 both the parties mutually agreed to extend the time of Agreement to Sell from 31.12.2007 to 30.06.2008 vide an extension Agreement dated 27.12.2007. Plaintiffs were always ready and willing to perform their part of contract and had balance sale consideration and other necessary expenses for



getting the Sale Deed executed and registered in their favour, but defendant avoided to execute the Sale Deed in favour of the plaintiffs. Accordingly, Plaintiffs issued legal notice dated 23.06.2008 under registered A.D., cover as well as under Postal Certificate to the defendant reminding him to be present before the Sub Registrar, Sonipat on 30.06.2008. Defendant was also clearly informed that the plaintiffs would remain present on the said date in Tehsil office along with the balance sale consideration and other necessary expenses. Plaintiffs got issued Demand Drafts/Pay Orders No. 491673/08 to 491676/08 dated 30.06.2008 of Oriental Bank of Commerce, Khubru in the name of defendant Raj Kumar for Rs. 6,00,000/- each total amounting to Rs. 24,00,000/- with intention to pay the balance sale consideration to the defendant. The plaintiffs had also the money to meet out other necessary expenses for the purchase of stamps and execute and registration of the sale deed. Plaintiffs waited for the defendant in the premises of the office of Sub Registrar, Sonipat throughout the day but the defendant did not turn up. Finding no other alternative, the plaintiffs got their presence marked before the Execution Magistrate/Sub Registrar, Sonipat by executing an affidavit which was duly attested by the Executive Magistrate. As defendant failed to appear on the said date, plaintiffs issued another legal notice dated 11.07.2008 under Registered A.D. Cover as well as under Postal Certificate requesting the defendant once again to execute the Sale Deed in favour of the plaintiff after payment of balance sale consideration. But defendant did not do so. Thereafter, the plaintiffs met with the defendant on 15.08.2008,



26.10.2008 and lastly on 07.12.2008 to persuade him to execute the Sale Deed. However, to no avail. As such, present suit was filed on 12.12.2008.

4. On notice, defendant appeared and resisted the suit by filing written statement denying the Agreement dated 06.03.2007. It was denied in the written statement that defendant had entered into any Agreement to Sell the suit property with the plaintiffs for Rs.40 lacs or that he had received Rs.16 lacs from the plaintiffs as earnest money. Defendant stated that he never executed any Agreement to Sell and receipt in favour of the plaintiffs. It was alleged that his signatures on the Agreement to Sell and receipt are forged. Therefore, question of execution of Sale Deed did not arise. Defendant denied that plaintiffs issued any legal notice to him. Accordingly, dismissal of the suit was prayed for.

5. Plaintiff filed replication reiterating averments made in the plaint and denying those made in the written statement.

6. On the basis of the pleadings of the parties, the learned trial Court framed the following issues on 24.03.2009: -

“1. Whether the defendant entered into an agreement with the plaintiff to sell house mentioned in para No. 1 of the plaint for sale consideration of Rs. 40,00,000/- and received Rs. 16,00,000/- as earnest money?OPP.

2. Whether the plaintiff is/was ready and willing to perform his part of contract? OPP.

3. Whether the plaintiff is entitled for a decree of possession by way of specific performance? OPP.

4. Whether the suit of plaintiff is not maintainable?OPD

5. Relief.”



7. Upon appraisal of the pleadings and the evidence led by the parties, issues No. 1 to 3 were decided in favour of the plaintiffs and against the defendant; issue No. 4 against the defendant and in favour of the plaintiffs; and accordingly vide judgment and decree dated 31.05.2013, the learned Civil Judge (Senior Division), Sonipat had decreed the suit of the plaintiffs with costs and directed the defendant to execute the sale deed of the suit house in favour of the plaintiffs after receiving balance sale consideration as per agreement dated 06.03.2007 failing which plaintiffs shall be at liberty to get the sale deed executed through process of the Court. The appeal filed by the defendant was dismissed with costs by the learned Additional District Judge Sonapat vide judgment and decree dated 19.05.2015. Hence, the present Second Appeal by the defendant.

8. It is *inter alia* submitted by learned counsel for the appellant/defendant that the Agreement to Sell is a forged and fabricated document as it is executed on a stamp paper of only Rs.10. It is contended that in a property allegedly sold for sale consideration of Rs.40 lacs, Agreement to Sell could not have been executed on a stamp paper of only Rs.10. This very fact shows that the Agreement in question was a forged and fabricated document. Moreover, register of the stamp vendor has not been summoned to prove that who had purchased stamp paper. This creates suspicion and cloud in the case of the plaintiffs. Even plaintiff No.1 has admitted in his cross-examination that "*defendant purchased stamp himself at both times i.e. for the agreement to sell and*



for the extension of agreement to sell and none of the plaintiffs went to the court to purchase the stamp paper as well as to get attestation of the document", which also creates suspicion in execution of the Agreement.

9. Learned counsel further vehemently submits that the earnest money is alleged to have been paid by the plaintiffs to the defendant in cash. It is contended that there is no proof whatsoever of payment of the said earnest money. Even no Receipt was issued by the defendant. Plaintiffs have been unable to show the source of the huge amount of earnest money. Although plaintiff has stated that he has proof and record of the said earnest money, however, none has been produced by him. Therefore, payment of earnest money is not established.

10. It is further contended that the fact that Agreement to Sell is a forged and fabricated document, is also borne out from the fact that Scribe was not a professional Scribe/Document Writer but was a person who runs a business of supplying building material. Learned counsel argues that a person who sells bricks, cement et cetera will have no experience in drafting as well as no license to draft the Agreement; and therefore, creates shadow of doubt upon the Agreement to Sell dated 06.03.2007.

11. Learned counsel submits that in actual fact, the plaintiff No.1 was a guarantor of the bank loan of the defendant as suit property was mortgaged. It is submitted that in this circumstance, how can the plaintiffs file a suit without impleading the concerned Bank?



12. Furthermore, the learned Courts below have erred in law in ignoring the fact that plaintiff No.2 did not step into witness box who was material witness as she is alleged to have signed Agreement and Extension Agreement as also the alleged receipt of earnest money of Rs.16 lacs. Therefore, the case of the plaintiffs was not proven in law. The statements of the attesting witnesses cannot be relied upon as not only are there contradiction in their statements, but the said witnesses are interested witnesses as they admitted that they knew Ramesh Kumar Mehta father of plaintiff No.1 and husband of plaintiff No.2. The said Rakesh Kumar Mehta (PW6) had conspired against the defendant.

13. To elaborate, learned counsel submits that the courts below had not appreciated that the witnesses are interested witnesses as: **PW 1** was plaintiff Sumesh Kumar Mehta; and **PW 2 Bank Clerk**, who admits at page no. 73 back side that he knows plaintiff as well his father and they are his customers and he used to reside in Braham Colony that is near of plaintiff house as well as near of plaintiff father clinic. **PW 3 Gulshan Kumar** gave contradictory statement as once he refused that he does not know Dr. R.K. Mehta and further admits at page no. 75 that he knows Dr. R.K. Mehta. **PW4 Dharam pal** admits that, he knows to Dr. Ramesh Kumar Mehta and used to get medicine from him and admits that his shop is also on Old D.C. Road near the clinic of plaintiff no.1 father; and **PW5 Kishan Chand** at page no. 76 back side admits that he knows Dr. R.K.Mehta since 10-12 years and used to frequent visits to his house and also confirm that he also know to typist Gulshan Madaan. **PW6 Dr. Ramesh Mehta** father of



plaintiff no. 1 and husband of plaintiff no. 2, is admittedly interested witness.

14. It is submitted that the courts below had not appreciated the fact that the alleged agreement is dated 06.03.2007 but attested by notary on 22.03.2007, which proves suspicious in execution of the agreement. Further in respect to presence of the appellant before the notary, who even did not saw the identity card before attesting the prepared agreement, which proves the case of the plaintiffs was purely result of fraud.

15. The Id. Courts below failed to correctly appreciate the expert opinion of the FSL, Karnal, Madhuban, which fails to compare the signature. The report is starting from page no. 182 reveals that they could not compare the signatures of the defendant and had not given any opinion in favour of the plaintiff. It is further submitted that the first appellate court had taken contrary version while appreciating in para no. 21 of the appeal by holding that, *"FSL has not stated that the disputed signatures on the agreement to sell, receipt and extension agreement are not of defendant"* as the FSL have not gave any specific comments on the alleged signatures of the appellant and therefore, the opinion of the FSL cannot be used against the Appellant.

16. Ld. Counsel argues that the First appellate court had committed error while holding that in the same paragraph 21 that, *"burden to disprove the execution of agreement shifted upon the defendant/appellant and he could do so by examining his private expert*



for disproving the signature" and ignored the attempts done by the appellant herein as appellant moved an application through counsel to compare the signature from FSL, Madhuban, which was dismissed. It is submitted that the appellant had then approached this Court and got permission to allow the same. It is pertinent to mention herein that when the FSL Madhuban failed to give any opinion on the signatures of the appellant, he again moved an application to compare the same with FSL, Hyderabad and the application was dismissed by the trial court and then appellant again approached this Court through a Revision petition but this time the said Revision was dismissed. In such circumstances to say that the appellant could approach the private experts, is illegal and void.

17. It is submitted that the courts below had committed error in holding that the plaintiffs were ready and willing to perform the contract of sale without proving the fact of receiving the earnest money of 16,00,000/- which was precedent condition to move further on the issue of the readiness and willingness of the plaintiffs. Ld. Courts below also had not appreciated that Drafts had been prepared in Khubru branch, while the property for sale was in Sonipat; and if alleged deal were to be done in Sonipat, if alleged documents had to be executed and to appear before the Sub Registrar in Sonipat then the issuance of drafts by Khubru Branch, where the plaintiff and his father were having account as admitted by PW2 i.e. bank clerk in his cross examination and it was easy to deal with this own bank, where the PW6 and plaintiff were having well acquaintance because the plaintiff was sure that the same have to be



cancelled in the same evening as the appellant never entered in any agreement.

18. It is lastly submitted by learned counsel for the defendant that the present valuation of the suit property would be about Rs.3–4 crores. It is submitted that accordingly, the said property at this juncture in time cannot now be sold for a paltry sum of ₹40 lakhs.

19. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees be set aside.

20. *Per contra*, learned counsel for the plaintiffs/respondents vehemently opposes submissions made on behalf of the appellant and submits that defendant has denied execution of Agreement. However no particulars of alleged fraud even pleaded, much less proved so much so, that no response was ever given to the notices served and it was for first time that plea of fraud had been taken vide written statement. Since defendant had denied Agreement, defendant is precluded from questioning readiness and willingness of the plaintiff. The respondent/plaintiff has proved readiness and issued two legal notices dated 23.06.2008 (Ex.P6) and 11.07.2008 (Ex.P13) and attendance before registrar 30.06.2008 (Ex.P/12). Copies of four demand drafts dated 30.06.2008 (Ex.P8 to Ex.P11). Learned counsel further submits that the defendant had examined Scribe, notary and all attesting witnesses. With respect to plea of handwriting expert, defendant preferred an application for examination of signature by expert. The said application was dismissed by learned Trial Court vide order dated 02.04.2010 (available at



page 104 of LCR). The said order was set aside by this Court (available at page 162 of LCR). Thereafter, Handwriting Expert was appointed, who submitted his report dated 29.07.2010. However, the objections filed by the defendant/appellant qua the said report were dismissed on 13.01.2011 (available at page 107 of the LCR). The said order was upheld by this Court vide order dated 09.02.2011 (available at page 206 of the LCR). Defendant had filed another application for examination by another CFSL, which was also dismissed by learned Trial Court vide order dated 01.11.2011 (available at page 114 of the LCR).

21. In rebuttal, learned counsel for the defendant reiterates his submission that Agreement to Sell is a forged document.

22. No other argument is raised on behalf of the parties.

23. I have heard learned counsel and perused the case file alongwith the Lower Court Record in detail. After giving my very thoughtful consideration to the rival submissions made on behalf of both the parties, I find no merit in the submissions made by the appellant/defendant.

24. Given the long history of this litigation, it will be useful to see the sequence of events in chronological order as follows: –

06.03.2007/Ex.P/3: Agreement to sell is entered inter se the parties, for sale consideration of Rs. 40,00,000/-. The Appellant received a sum of Rs. 16,00,000/- as earnest money, receipt **Ex.P/4**.

27.12.2007/Ex.P/5: Execution of the sale deed was fixed up to 31.12.2007. However, on 27.12.2007 the parties to the Agreement



mutually agreed to extend the time of agreement to sell from 31.12.2007 to 30.06.2008 vide an extension agreement dated 27.12.2007.

30.06.2008: Despite issuance of legal notice dated 23.06.2008 (Ex P/6), Appellant did not come present on 30.06.2008. The attendance of Plaintiff before the Sub Registrar is proved from Affidavit of Attendance (Ex.P/12) Respondent issued another legal notice dated 11/07/2008 (Ex.P/13).

12.12.2008: Suit for specific performance filed by the Respondents

31.05.2013: Ld. Trial Court decreed the suit vide judgment and decree dated May 31, 2013.

19.05.2015: Ld. First Appellate Court upheld the judgment of Ld. Trial Court and accordingly, dismissed the Appeal.

Appellant preferred captioned Regular Second Appeal before this Court. Initially since there was no interim stay granted.

08.09.2015: Respondents preferred execution petition No. 145 of 2016 (Annexure R/2-CM 8300-2022). Since, the Respondents had learnt about the loan facility obtained qua property in question, the Respondents had duly intimated UCO Bank vide legal notice dated September 8, 2015 (Annexure R/1-CM-8300-2022).

30.01.2016 (Annexure R/2): Ld. Executing Court had allowed the Respondents to deposit the balance sale consideration of Rs. 24,00,000/-. Further, UCO Bank had caused appearance and made a statement that the outstanding loan amount was Rs. 12,76,938/- and had filed an application (R/3) seeking adjudication of its claim.



27.07.2016: This Court, while issuing notice in Captioned Appeal, directed the Ld. Executing Court to adjourn the proceedings beyond the date fixed by this Hon'ble Court.

October 2022: Respondents had received a copy of caveat petition (R/4). From said petition it was learnt that UCO Bank had declared the account of the private Appellant as NPA on May 31, 2017, with an outstanding amount of Rs. 10,67,843. Further section 13 (2) notice of SARFESI Act, 2002 had been sent to Appellant on June 16, 2017 and notice under 13 (4) is stated to have been sent on February 18, 2022. UCO Bank was seeking to auction the property in question on October 28, 2022.

28.10.2022: Respondents filed CWP-24823-2022 (Annexure R/5) before this Court, wherein the Respondents were directed to pay a sum of Rs.21,87,000/- to UCO Bank within one month.

20.12.2023: Since the Respondents have deposited the entire loan amount, the Bank has preferred CM-20813-CWP-2023 seeking disposal of Appeal. The Division Bench, on taking note of the fact that the entire amount has been deposited by the Respondents, has issued notice and has even directed that the title deeds of the property be not released to anyone.

25. The above facts establish that the arguments of the appellant to the effect that the plaintiffs did not have balance sale consideration and did not satisfactorily prove their readiness and willingness, is without substance. Readiness and willingness of the plaintiffs is also proven on target date of 30.6.2008. As per recent judgment of the Hon'ble Supreme



Court in '***R. Shama Naik vs. G. Srinivasiah***' 2024 INSC 927, two specific ingredients are required to establish readiness and willingness: (a) presence in the Tehsil; (b) demonstrate availability of funds. Presence of the plaintiffs in the Tehsil Office, is established from the Affidavit of Attendance Ex. P12. Availability of funds is proven from the evidence of PW2 Bank Clerk. Availability of necessary funds to the tune of Rs.24 lacs on 30.06.2008 is also established from the demand drafts all dated 30.06.2008 Ex.P8 to Ex.P11 for the said amount. Thus, readiness and willingness of the plaintiffs to execute the Sale Deed is irrevocably established from the above facts.

26. The argument of the defendant that payment of earnest money of Rs.16 lakhs/– was made in cash casts suspicious shadow of doubt on the Agreement in question, is tenuous and therefore liable to be rejected. No doubt Rs.16 lacs was paid by the respondents in cash. But it cannot be ignored that plaintiff no.1 had clearly stated in his testimony that he possessed the record in respect of the said payment. However, it was the defendant who did not ask either the plaintiffs or make a request to the Court to produce the said record. As such, no, adverse inference can be drawn against the plaintiffs in this regard. In any event, the said payment was also proven from the evidence of attesting witness PW3, who had categorically stated that payment of Rs.16,00,000/– was made in his presence.

27. Needless to say, the Agreement to Sell stood duly proved in accordance with law from the evidence of PW1/plaintiff No.1; PW2/Bank Clerk; and PW3 Scribe of the Agreement. From the testimonies of these



witnesses, the execution of the Agreement was duly proven in accordance with law. PW3 Scribe has categorically stated that the Agreement and receipt were typed by him on the instructions of the defendant; and that after preparing Agreement and receipt, contents of the same were read over to the parties who then affixed their signatures on the Agreement and the receipt after admitting the same to be correct. Witnesses also put their signatures on the Agreement and receipt. PW3 has further stated that the payment of Rs.16 lacs was made in his presence. He proved both the Agreement Ex.P3 and the receipt Ex.P4, as also the extended Agreement dated 27.12.2007/Ex.P5 which was also prepared by him in the above manner. PW2 Bank Clerk proved that the balance sale consideration of Rs.24 lacs was available with the plaintiffs in the form of demand drafts.

28. As regards the objection of the appellant that the Scribe was not a professional document writer, the same is liable to be rejected as there is no bar in law that Agreement cannot be got scribed/typed from non-professional.

29. The appellant/defendant has also disputed his signature on the Agreement and the Receipt. In this regard, the defendant has made much hue and cry about the disputed FSL report received from the Government Laboratory at Madhuban. It is to be noted that it does not lie in the mouth of the defendant to dispute the said report, or seek to place reliance upon another report as, it was upon an application filed by the defendant that they said Report was sought. The defendant had moved an application for appointment of Fingerprint and Expert of FSL, which was dismissed by the



learned trial Court vide order dated 02.04.2010 (page 104 of the LCR). This order was challenged by the defendant before this Court, by way of Civil Revision Petition bearing No. 2550 of 2010, which was allowed by this Court vide order dated 21.04.2010 (at page 162 of the LCR), which reads as under:-

“This defendant's revision petition is directed against the order dated April 2nd, 2010 passed by Civil Judge (Senior Division), Sonapat, whereby, he rejected the plea of the petitioner for comparison of his signatures on the alleged Agreement to sell, receipt and writing whereby time to get sale-deed was extended, from Forensic Science Laboratory, Madhuban, (Haryana), (for short, "FSL") on the ground that FSL takes sufficient time to submit the report and allowed the defendant to get compared the signatures from some private Hand Writing Expert.

Contention of learned counsel for the petitioner is that FSL is a Government undertaking division and it carries more authenticity than a private Hand Writing Expert. The submission is persuasive. It is the petitioner, who himself wants to get the signatures compared from the FSL, which, of course, is a Government undertaking and is more reliable. This being so, the revision petition is accepted and the order under challenge is set-aside to the effect that the petitioner is allowed to get his signatures compared from Forensic Science Laboratory, Madhuban, Karnal, (Haryana), through the process of the Court.”

30. Taking note of the above stand of the defendant, it is now not open to the defendant to challenge the said report.



31. In this regard, it is also pertinent to note that pursuant to the above said order dated 21.4.2010 of this Court, a report dated 29.07.2010 of the Handwriting Expert was received from the Government Forensic Science Laboratory at Madhuban, Karnal (available at page 182 of the LCR). The defendant filed objections to the same, which was dismissed vide order dated 13.01.2011 (available at page 107 of the LCR). Even CR No. 924 of 2011 was filed by the defendant against the said dismissal of objection, which was dismissed by this Court vide order dated 09.02.2011 (available at page 206 of the LCR). Therefore, from the above facts, it is clear that defendant was not able to prove that Agreement in question was forged Agreement.

32. Thereafter, the appellant had preferred an application for additional evidence before the learned trial Court, which was dismissed vide order dated 01.11.2011. The defendant had also challenged the said order dated 01.11.2011 before this Court by way of filing CR No. 7507 of 2011. However, the said Civil Revision has been dismissed by this Court vide order dated 21.08.2012, which reads as under:-

“This petition has arisen out of the order dated 1.11.2011 passed by the Civil Judge (Sr. Division), Sonapat, declining the application filed by the defendant-petitioner for leading additional evidence by examining the documents Ex.P3 to Ex.P5 through Central Forensic Science Laboratory, Hyderabad, Andhra Pradesh.

The defendant-petitioner had filed an application for leading additional evidence for sending documents Ex.P3 to Ex.P5 to the Central Forensic Science Laboratory, Hyderabad,



after he refused to place reliance on the report made by the Government Handwriting Expert, Forensic Science Laboratory, Madhuban, Karnal.

Factual background of the case is that the plaintiff-respondents had filed a suit for specific performance of the agreement to sell dated 6.3.2007 on 12.12.2008. On appearance, the defendant filed written statement and issues were framed on 24.3.2009. The plaintiff concluded their evidence on 29.10.2009. After availing three effective opportunities to conclude his evidence, the defendant could not conclude the evidence. On 2.4.2010, the defendant sought permission to get the aforesaid documents examined from the government finger print expert, Forensic Science Laboratory, Madhuban, which was dismissed by the trial court with liberty that he could examine any hand writing expert by getting the documents compared on his own responsibility with further observations that if the matter is referred to the Government Handwriting Expert, Forensic Science Laboratory, Madhuban, then the case would unnecessarily be delayed.

On challenge of the said order through petition No. 2550 of 2010, this court allowed the petitioner to get his signatures compared from the Government Forensic Science Laboratory, Madhuban, Karnal, Haryana. Accordingly, the documents were sent to the laboratory, which submitted its report with the following observations:-

"LABORATORY EXAMINATION

All the documents were carefully and thoroughly examined with Scientific Instruments, such as, Stereo Zoom Microscope, Vide Spectral Comparator, Docucenter expert etc. under different lighting condition and I am of the opinion that:



OPINION-1 On inter-se examination of standard signatures marked S1, A1 to A10 reveals that:

(i) The standard signature marked A1 is a photostat signature and show similarities with the specimen signatures marked S1 and standard signatures marked A2 to A6, A10 in design of characters, their writing movement as well as manner and nature of connecting strokes. The standard signatures marked S1, A1 to A6 & A10 are all freely written and show reasonably inter-se consistency among them with natural variations in the formation of various characters.

(ii) Standard signatures A7 & A8 are overwritten in various characters and also show retouching at various places and hence have not been considered towards opinion.

(iii) The standard signatures marked A9 is somewhat conscious in its execution resulting in the isolated formation of characters and does not show consistency with standard signatures marked S1, A1 to A6, A10. Hence standard signature marked A9 has not been considered towards opinion. Comparison of standard signatures marked S1, A1 to A6, A10 with Questioned signatures marked Q1, Q2 & Q4 shows some similarities in the execution of characters such as: shape of the body of part of 'j', nature of bifurcation at its top as in Q2. Q1 vide A2, S1 the nature and location of 'dot' of 'j' as observed Q2 & Q4 is similarly exemplified in S1 and A2: shape and direction of axis of 'a' in the word 'Raj' in Q2 vide A2; Nature of bifurcation in the two strokes of 'r' and rightward, upward direction of its finish as in Q4 vide A2: Compressed nature of body oval of 'a' in the word 'Raj' (Q1, Q4) and in the word 'Kumar' (Q2, Q4) vide



A1: Extended location of commencement of body curved part of 'R' vide Q2. S1, A2. However, the characteristics such as: Vertical straight nature of J in Q4: Movement in the body part of 'm' with omission of its terminal part resulting in an appearance as 'n' in Q2, Q4 nature of angularity in the body part of 'm' (Q1): Movement in the body part of 'r' (Q1, Q2); right to left direction and location of commencement of buckle of 'K', its shape as in Q2. location of buckle of 'K' (Q4) w.r.t. its vertical staff: Shape of the body curved part of 'R' (Q1, Q2, Q4), Nature of strokes at one or the other places as observed in questioned signatures marked Q1, Q2, Q4 is also not explainable from the standards incorporated in this opinion. In addition to these. in questioned signature marked Q2 re-touching have been observed in the upper part of vertical staff of 'R' and upper part of 'j' in the word 'Raj' Indentation have been observed underneath the characters 'a' & 'l' in the word 'Raj' in Q1 and underneath the characters 'm' & 'a' in the word 'Kumar' in Q1. Retouching is also observed in the upper part of vertical staff in 'R' in Q1.

Based on the above observations between standard questioned signatures, it has not been possible to fix the authorship of Q1, Q2 & Q4 in comparison with supplied standards marked S1, A1 to A6, A10.

OPINION-2 *Comparison of standard signatures marked S1, A1 to A6, A10 with questioned signature marked Q3 shows that the movement, manner as well) as nature of connecting strokes among the characters as observed in Q3 are not explainable from the supplied standards marked S1, A1 to A6, A10. As such, it has not been possible to express a definite opinion on Q3 in*



comparison with supplied standards marked S1, A1 to A6, A10.”

Being dissatisfied with the report, the defendant filed the objection petition and thereafter requested the court to get the admitted and disputed signatures compared from any other independent Government Agency i.e. Central Forensic Science Laboratory, Hyderabad. The trial court dismissed the objection petition on 13.1.2011 and turned down the request of the defendant for comparison of the admitted signatures and disputed signatures from the Central Forensic Science Laboratory, Hyderabad. Still being dissatisfied with the said order, the petitioner has come up in the revision petition.

The petitioner himself had moved the application for getting the signatures compared from the Fingerprint Expert from the Government Laboratory i.e. Forensic Science Laboratory, Madhuban, Karnal, but he himself was dissatisfied with the said report. The court in its order dated 13.1.2011 has elaborately discussed the reasons for not allowing the objections raised by the defendant to the report made by the Forensic Science Laboratory, Madhuban, Karnal. The civil revision against the said order was also dismissed by this Court on 9.2.2011.

In any case, the opinion formed by the Handwriting Expert is not conclusive but an opinion evidence but the court has to decide the execution of the documents on the basis of the other evidence. At the same time, in addition to the evidence led by the parties, the court has the power to examine the documents with its judicious eye. As such, for the aforesaid reasons and for the reason that the revision petition against the



order passed on the objection petition to the opinion, having been dismissed by the court, there are no grounds to further permit the petitioner for sending the documents to the another expert.

No grounds to interfere.

Dismissed.”

33. The relevant findings of the learned lower appellate Court are contained in paras 17 and 21 of the judgment and decree dated 19.05.2015, which read as under:-

“17. Plaintiff No. 1 has examined himself as PW1 and has narrated his case in his affidavit Ex.PW1/A. Non-examination of plaintiff No. 2 is not fatal to the case of the plaintiffs because it is not necessary to examine all the plaintiffs in evidence. Plaintiff No. 1 clearly stated in the cross-examination that he was having the record regarding payment of Rs. 16,00,000/- as earnest money. If the defendant wanted to see the record, he could request the court to ask the plaintiff to produce the record, but no such request was made by the defendant. Therefore, case of the plaintiffs cannot be discarded on the ground that the record regarding source of payment of Rs. 16,00,000/- was not produced.

XXX XXX XXX

21. Plaintiff himself applied for comparing the disputed signatures of defendant on the agreement to sell, receipt and extension agreement with the admitted signatures of defendant and on his request, Hon'ble High Court allowed him to get disputed signatures of defendants compared from FSL, Madhuban with his admitted signatures. Although, FSL Madhuban has reported that it is not possible to fix authorship of disputed signatures in comparison with supplied standard



signatures of defendant. But FSL has not stated that the disputed signatures on the agreement to sell, receipt and extension agreement are not of defendant. Moreover, FSL has stated that standard signature marked 'A9' is somewhat conscious in its execution resulting in isolated formation of characters and does not show consistency with other standard signatures. If the disputed signatures and the admitted signatures of defendant are seen from naked eyes, they appear to be of same person. Since the execution of the agreement was supported by three attesting witnesses, scribe and notary public, the burden to disprove the execution of the agreement shifted on defendant and he could do so by examining his private expert for disproving his signatures on the agreement to sell, receipt and extension agreement. Defendant has not led any evidence except his oral statement. Therefore, it is concluded that the defendant failed to rebut the evidence of plaintiffs. The contradictions in the statements of witnesses of the plaintiffs pointed out by learned counsel for defendant are minor discrepancies and are not fatal to the case of the plaintiffs."

34. Last but not the least, it is also to be seen that despite repeated queries from the Court, the Id. counsel for the appellant has been unable to satisfy as to how this Court, in 2nd Appeal, can interfere in the concurrent findings of fact of the Id. Courts below. In this regard, reference has to be made to landmark judgment of the Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Smt. Godawari (Deceased) Thr. LR's and others (SC) : Law Finder Doc Id # 2034559*** wherein it is held that:

"A. Punjab Courts Act, 1918, Section 41 - Execution of agreement(s) to sell at prevalent market value as sale consideration



- Dismissal of review applications in Second appeal - Appeal by plaintiff - Appellant-plaintiff specifically averred that due to rising rate of suit property, respondents-defendants, out of sheer greed, threatened to take forcible possession and also threatened to alienate suit property in favour of 3rd party - Further, written statement of respondents-defendants shows that they denied that appellant-plaintiff was in possession of suit property - Respondents-defendants further asserted their right to alienate suit property, if they so desired - Therefore, order of High Court that if plaintiff desires to get the sale deed executed, he is required to pay present prevalent market rate of suit property set aside.

B. Punjab Courts Act, 1918, Section 41 - Second appeal - Even when court exercises jurisdiction under Section 41 of Punjab Act, it cannot interfere with findings of fact in second appeal on ground that findings are erroneous, howsoever gross or inexcusable the error may seem to be - Findings of fact would also include findings on basis of documentary evidence - Jurisdiction under Section 41 of Punjab Act would be available only when there is substantial error or defect in procedure provided by CPC or by any other law for time being in force.

C. Punjab Courts Act, 1918, Section 41 - Second appeal - Second appeal is not forum where court is to re-examine or re-appreciate question of fact settled by trial court or Appellate Court - Though in view of Section 41 of Punjab Act, it is not necessary to frame substantial question of law, jurisdiction of High Court under second appeal cannot be exercised for re-appreciation of evidence."

(Emphasis added)

35. It is my view that all all issues in the present case are clinched/ arguments of the appellant are set at rest, by the law lay down in the above said judgment. No substantial defect or error in procedure or law is brought

to the notice of this Court, which would warrant interference in the concurrent findings and judgments of the learned Courts below.

36. In light of the above discussion, as also the factual and legal position noted above, the present Regular Second Appeal is hereby **dismissed.**

37. Pending applications, if any, stand disposed of.

30.07.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes